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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re MARC H., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MARC H.,

Defendant and Appellant.

A095398

(Contra Costa County
Super. Ct. No. J9701727)

Marc H. appeals from the denial of a motion to modify his commitment to the California Youth Authority (CYA). (Welf. & Inst. Code, § 779.) Appellant served a portion of his CYA commitment but escaped from a CYA facility after he reached the age of majority. He pled guilty to escape in adult court and served jail time, after which he was returned to CYA custody to serve out the remainder of his commitment. Appellant contends that CYA abused its discretion by returning him to custody because it had relinquished its authority over him by referring him to adult court for prosecution on the escape charge. We disagree and affirm.

I. FACTS

Appellant was born in August 1980. On July 10, 1997, appellant pled no contest in Contra Costa County juvenile court to possession of a firearm by a minor (Pen. Code,

§ 12101, subd. (a)), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), and disobeying a court order (Pen. Code, § 166, subd. (a)(4)). On October 15, 1997, the juvenile court sustained a supplemental petition alleging appellant had committed a carjacking. (Pen. Code, § 215.) On July 2, 1998—close to appellant’s 18th birthday—the juvenile court sustained yet another supplemental petition alleging that appellant had committed assault with a deadly weapon or by means of force likely to produce great bodily injury.

On August 11, 1998, the Contra Costa juvenile court committed appellant to CYA for a maximum term of confinement of 11 years 2 months. On March 26, 1999, we affirmed the jurisdictional and dispositional orders of the juvenile court in an unpublished opinion, after appellate counsel filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436). (*In re Marc H.* (March 26, 1999, A084304) [nonpub. opn.].)

In August 1999 appellant turned 19. On October 25, 1999, he escaped from the Washington Ridge Youth Conservation Camp, a CYA facility in Nevada County. He was apprehended that same day and charged as an adult in Nevada County Superior Court with escape from a CYA facility, a felony (Welf. & Inst. Code, § 1768.7, subd. (a)).

On November 19, 1998, and pursuant to a plea bargain, appellant pled no contest to the escape charge before Judge Albert P. Dover of the Nevada County Superior Court. Judge Dover placed on the record the terms of the plea bargain, telling appellant “you won’t receive more than 16 months in state prison, concurrent with the remainder of your CYA time, *which will be converted to prison time.*” (Italics added.) On December 27, 1999, the superior court sentenced appellant to state prison for 16 months, noting “there was a plea entered with the understanding that CYA time would be converted to CDC time and [appellant] would not receive a sentence in excess of 16 months, . . .”

Appellant served his prison term in a facility of the California Department of Corrections. When he was about to be paroled, CYA placed a hold on him so he could be returned to CYA custody to serve out the remainder of his CYA commitment. He was duly returned to CYA custody.

On April 3, 2001, appellant moved the juvenile court pursuant to Welfare and Institutions Code section 779 for an order modifying his CYA commitment.¹ The gist of the modification motion was that CYA had abused its discretion by returning appellant to custody. (See *In re Owen E.* (1979) 23 Cal.3d 398, 406.)

Specifically, appellant argued that CYA had relinquished its control of and authority over him by referring the escape charge to adult criminal court for prosecution. He also argued that he entered his Nevada County plea with the understanding that, in essence, his remaining CYA term would be collapsed into any state prison term and he would leave prison subject only to the constraints of adult parole. Appellant contended that if he was not released from CYA custody he had the right to withdraw his plea.

On May 24, 2001, the Contra Costa juvenile court denied the motion to modify. The court found that CYA had not abused its discretion, and that CYA had not relinquished its control over appellant by virtue of the escape prosecution: “[Appellant] committed a separate crime in the escape and prosecution of that crime ought not [to] preclude the CYA from exercising its discretion in the rehabilitation of [appellant].” By implication, the court also indicated it was without jurisdiction to enforce the Nevada County plea bargain—assuming it has been violated.

II. DISCUSSION

Appellant contends that CYA has abused its discretion by dealing with him in “a piecemeal fashion.” He argues that once CYA sought prosecution in adult court for the escape charge, it relinquished all control over him to the adult criminal justice system—and cannot revert to treating him as a juvenile offender. Appellant also suggests it is fundamentally unfair to return him to CYA custody when, by the terms of his plea bargain, he believed he would be subject only to adult prison confinement and his CYA commitment would be incorporated into his prison sentence and served concurrently.

We disagree with appellant’s contentions. We first note that the sole issue before us is whether CYA abused its discretion. The Nevada County plea bargain is not before

¹ Subsequent statutory citations are to the Welfare and Institutions Code.

us. Whether appellant pled with the understanding he now claims, and whether his plea should be set aside, are matters for the court which took appellant's plea.

Under controlling law, section 779 does not confer authority on a juvenile court to modify a CYA commitment unless CYA has abused its discretion. (*In re Owen E.*, *supra*, 23 Cal.3d at pp. 405-406.) Appellant contends there has been an abuse of discretion because, having referred appellant to adult court on a postcommitment offense, CYA no longer has the authority to take custody of appellant for treatment in the rehabilitative facilities of the juvenile justice system.

Appellant relies on *In re Dennis J.* (1977) 72 Cal.App.3d 755 (*Dennis J.*) and its progeny: *People v. Superior Court (Woodfin)* (1982) 129 Cal.App.3d 970, and *In re Shanea J.* (1984) 150 Cal.App.3d 831. *Dennis J.* held that once a minor is found unfit for treatment by the juvenile court (§ 707) as to a charged offense, the juvenile court can no longer retain jurisdiction over the minor with regard to other charged offenses. (72 Cal.App.3d at pp. 762-763.) *Dennis J.* stands for the principle that once he has been found unfit for the rehabilitative treatment of the juvenile court, previous juvenile court dispositions and placements can no longer serve any purpose for the minor.

Dennis J. and its progeny do not apply here. No court has made a finding that appellant was unfit for the juvenile court. He simply committed a new crime after he became an adult, but before he had served his juvenile court CYA commitment. Several cases have distinguished *Dennis J.* when there has been no unfitness finding, and have held that under that circumstance the juvenile court does not relinquish jurisdiction simply because a ward commits a new crime while an adult. These cases hold that in this situation the ward remains subject to juvenile court supervision even though tried and punished as an adult for subsequent crimes. (See *In re Mikeal D.* (1983) 141 Cal.App.3d 710, 716-718; *In re Donald B.* (1979) 89 Cal.App.3d 804, 806-808; *In re Larry T.* (1978) 77 Cal.App.3d 969, 972-974.)

We find these cases controlling. In the absence of any finding of unfitness, CYA did not abuse its discretion by retaining jurisdiction over appellant so he can continue his term, imposed for crimes committed while a juvenile, after serving his adult prison term

for the subsequent offense of escape. We note that a contrary ruling would reward CYA inmates who, facing a lengthy term, escape soon after the age of majority and are prosecuted as adults. Under appellant's argument, the adult escape prosecution would result in the negation of the balance of a lengthy CYA term duly imposed by the juvenile court for the purpose of rehabilitation.²

III. DISPOSITION

The order denying the motion to modify the CYA commitment is affirmed.

Marchiano, P.J.

We concur:

Stein, J.

Margulies, J.

² We also note that *Dennis J.* and its progeny have been superseded by statute. (§ 707.01; *In re Ivan T.* (1999) 76 Cal.App.4th 624, 630-632.)